

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-445 & 446/Del/2014
(ASSESSMENT YEAR-2003-04 & 2004-05)**

ACIT, Central Circle-17, New Delhi-110055. (APPELLANT)	Vs	Jaguar Leasing Pvt.Ltd., B-10, Shivalik, Malviya Nagar, New Delhi. PAN-AABCJ3625J (RESPONDENT)
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Assessee by	Ms. Sulekha Verma, CIT DR
Revenue by	Sh. Bhupesh Kumar Dhingra, CA

Date of Hearing	26.07.2016
Date of Pronouncement	26.09.2016

ORDER

PER DIVA SINGH, JM

By these two appeals the Revenue assails the correctness of the orders dated 13.11.2013 and 18.11.2013 of CIT(A)-II, New Delhi pertaining to 2003-04 and 2004-05 AYs on the identical grounds. It was a common stand of the parties that the issues raised by the Revenue in both the years are identical and are emanating from the same search conducted upon the assessee. Accordingly the grounds from ITA No.445/Del/2014 are reproduced hereunder for ready-reference:-

- 1. "The Commissioner of Income Tax (Appeal) erred in law and on facts of the cases in deleting an addition of Rs.32,20,420/- on account of unexplained expenditure u/s 69C of the IT. Act.*
- 2. The Commissioner of Income Tax (Appeal) has erred in law and on facts of the case in deleting and addition of Rs. 1,78,272/- on account of 50% disallowance of expenditure claimed by the assesses.*

3. (a) *The order of the CIT (A) is erroneous and not tenable in law and on facts.*
(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

2. Addressing the departmental ground, the Ld.AR submitted right at the outset that the appeals of the Revenue deserves to be dismissed following the orders of the ITAT in assessee's own case wherein identical issues have been decided in favour of the assessee. Copy of the said order dated 10.02.2016 in ITA No.447/Del/2014 for 2005-06 AY was relied upon. The appeal was passed over so as to afford time to the Ld.CIT DR to go through the said order.

2.1. In the second round, the Ld.CIT DR after going through the order and the facts fairly conceded that the points at issue are covered. It was her submission that the claim of the assessee has not been accepted to be genuine purchases and the relief is limited to the benefit of availability of funds has been granted on the sale of goods corresponding to unexplained purchases. In these circumstances, the issue it was submitted can be stated to be covered by the order of the ITAT.

3. We have heard the rival submissions and perused the material available on record. A perusal of the same shows that search was conducted at the premises of the assessee on 28.10.2008. Which fact is evident from the material on record and coincide with the facts considered by the Co-ordinate Bench. Notice u/s 153A was issued on 29.03.2010 requiring the assessee to furnish the return of income. In response thereto income of Rs.5,318/- was declared in 2003-04 AY and Rs.6,125/- in 2004-05 AY. A perusal of the order

of the Co-ordinate Bench shows that 2005-06 AY declared income was Rs.1,011/-. Subsequent to the issuance of notice u/s 143(2) and 142(1) etc. the AO took notice of the fact that the assessee company belonged to the “Thapar Homes Group” of cases. The director of the company was Mr.Inder Dev Sharma, a close associate of M/s Thapar Home Group of cases. One of the main allegations against the group is that several concerns have been floated by the group with dummy Directors and shareholders. These concerns were considered to be basically capital formation concerns which it was considered had build up huge reserves & surplus over the years. These Reserve & Surpluses were found to have been declared invested in stocks of textiles. As and when cash was required the stocks were claimed to be sold and the moneys were utilized for other purposes as per the requirements. In view thereof the genuineness of the purchases etc. was not accepted and the AO required the assessee to prove its trading activities and produce sales tax record to support its claim of purchases of Textile Goods of Rs.32,20,420/- and sales of Rs.37,79,507/-.

4. The assessee in response thereto claimed that since it dealt with only tax free goods thus there was no necessity to file its sales tax return. In these circumstances, the AO observed that apart from declaration of the assessee there was no independent proof of sales/purchases of the goods. Noticing the facts that all the purchases and sales were declared having been made in cash and the assessee did not maintain any bank account. As per the return the assessee had dealt with in items such as “Pashmina Shawls, Pashmina Shawls

plain, Suiting and Suit length (3 Mtr.)”. Since the assessee could not prove the genuineness of its business activities the claim of genuineness was not accepted. It was also noticed that there was no name of the company or the brand. Considering the fact that the opening stock was of the period before the block period of section 153A, the purchases of Rs.32,20,420/- were held to be bogus and brought to tax as an unexplained expenditure in 2003-04 AY and 2004-05 AY the purchase of Rs.32,23,540/- was held to be out of books and brought to tax as unexplained expenditure u/s 69C.

4.1. “Administrative and other Expenses” claimed were also held to be not supported with proper evidence. 50% of the same in both the years was disallowed leading to addition of Rs.1,78,272/- and 23,450/- in 2003-04 & 2004-05 AYs respectively.

5. Aggrieved the assessee came in appeal before the CIT(A). It is seen that the decision of the CIT(A) from para 6.1 to 6.17 shows that the AO was directed not to make any separate addition on account of purchase or expenditure. The AO was instead directed to work out the peak from the entries from the cash books including bank transactions and make the additions accordingly.

6. Aggrieved by this, the Revenue is in appeal before the ITAT. On a consideration of the order of the ITAT passed by the Co-ordinate Bench in order in ITA No.447/Del/2014, we find that on these issues the fact and circumstances are identical. It is seen that the findings reproduced by the Co-ordinate Bench in paras 6.15 & 6.16 are verbatim. Respectfully following the

same, the departmental appeals are dismissed. The relevant extract from the aforesaid order is relied upon is reproduced hereunder:-

4. *"We have heard learned CIT (DR) and perused the material on record. We find that the learned Commissioner of Income Tax(Appeals) upheld the action of the learned Assessing Officer regarding purchase & sale and the expenses, however, she has directed only take the peak of the entries as unexplained investment in expenditure. The relevant paras (para nos 6.15 & 6.16) of learned Commissioner of Income Tax (Appeals) are reproduced as under:*

"6.15. Therefore, contrary to the claims of the appellant, when is obvious and discernible' is that the appellant was one of the several entities in the whole scheme of network of companies belonging to the Thaper-Dhingra Group which were used of infuse unaccounted money in other companies of the group, through a well orchestrated arrangement of seemingly 'accounted' transactions, emanating from their 'audited' financial statement, but where in reality, the only activity was of 'book building'. In these circumstances, the claim of 'audited books' notwithstanding, the book results are required to be rejected, since the narration are artificial, sham and not reflective of the actual Business/commercial transactions.

6.16. Therefore, the action of the Assessing Officer, in disregarding the 'purchases', the 'sales and 'expense', is upheld. Since the appellant company along with the other companies are all 'in-house' to the Thapar-Dhingra group and there is a widespread web of inter se transactions amongst them, keeping their separate juridical identity in mind, the ends of justice will be met if in each case, addition of the peak of financial transaction, as worked out from the relevant cash book of each entity, is made. Therefore, the addition made by the Assessing Officer needs to be revisited. It may be mentioned that while the rejection of the books and the book results by the Assessing Officer is confirmed, reliance is being placed on the transactions traversing the cash book, irrespective of their notations, since amongst the inflow and outflow of cash, tax payments made by the appellant are independent and verifiable. Consequently, no separate addition is required to be made on account of purchases or expenditure. The Assessing Officer is directed to work out the peak from the entries in the cash book, including bank transactions, of the appellant for the relevant year and make a singular addition of the said amount, as unexplained investment/expenditure. As a result, ground 10 of the appeal and the additional ground of appeal relating to the finding of the Assessing Officer on the bogus nature of 'sales' are dismissed and grounds 6 and 7 of the appeal are partly allowed."*

5. *In our opinion, the findings of the learned Commissioner of Income Tax (Appeals) on the issue in dispute are well reasoned and no interference is required. She has not accepted the claim of the assessee of having the purchases as genuine. She has provided the benefit of availability of funds on sale of the goods corresponding to unexplained purchases, which is a judicious approach. Accordingly, the grounds of the appeal of the Revenue are dismissed.”*

6.1. Thus since facts and circumstances remained the same, we find no good reason to decide from the view taken by the CO-ordinate Bench in assessee's own case. Respectfully following the same, the departmental appeals are dismissed.

7. In the result, the appeals of the Revenue are dismissed.

The order is pronounced in the open court on 26th September 2016.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

ASSISTANT REGISTRAR,
ITAT NEW DELHI